IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 32847 of 2006(I)

AGAINST THE ORDER IN EP.338/2004 IN
OS..2649/1999 of III ADDL.MUNSIFF COURT,THRISSUR

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PETITIONER:

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1. C. KUMARAN, AGED 51 YEARS,
S/O. CHATHAN, SENIOR TELEPHONE OPERATOR,
ASSISTANT (G) SECTION, OFFICE OF THE
GENERAL MANAGER, TELECOM, BSNL, COCHIN DEVASWOM
BOARD BUILDING, THRISSUR.

2. K.R. JOSE, S/O. RAPPAI,
TELECOM MECHANIC, ALAGAPPANGAR EXCHANGE,
TELECOM CENTRE, P.O. PUDUKKAD, THRISSUR DISTRICT.

BY ADV. SRI.K.B.MOHANDAS
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

RESPONDENTS:

THE DHANALAKSHMI BANK LTD.,
TELECOM MECHANIC, ALAGAPPANAGAR EXCHANGE,
TELECOM CENTRE, KOTTEKKAD BRANCH, THRISSUR.

BY ADV. SRI.NAGARAJ NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 32847 OF 2006

Dated 14th December 2006

JUDGMENT

Petitioners are judgment debtors in O.S.2649/99 on the file of Munsiff court, Thrissur. In execution of the decree, E.P.338/05 was filed. This petition was filed under Article 227 of Constitution of India seeking a writ certiorari to quash execution proceedings. Case of petitioners is that decree holder did not show the entire payment made by petitioners and therefore execution proceedings is to be quashed.

2. Learned counsel appearing for petitioners and respondent were heard.

3. It is admitted case that several decrees and execution petitions are pending against petitioners. The only contention raised by petitioners is that entire amount paid by them were not accounted by decree holder. Learned counsel appearing for petitioners also submitted that they have raised a contention that they have no means and executing court

has overruled objection and ordered arrest. If that be the case remedy of petitioner is to challenge that order and not to seek quashing of execution proceedings. Even according to petitioners some amount is due and the only case is that entire amount paid by them was not accounted. If that be case, execution proceedings cannot be quashed as sought for. If the grievance of petitioners is that entire amount paid towards decree debt in E.P.338/05 is not accounted, it is upto them to produce sufficient evidence before executing court and seek fixation of the actual amount due.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.